CF0000062802

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIMINAL APPEAL NO. 1178 OF 1999

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

5495

APPELLANT IN JAIL ... BUDHRAM son of Thuliram Bhuchar, aged about 28 years, occupation agriculture, resident of village Erai, Chowki Ashta, P.S. Sanna, District Jaspur, M.P.

Filed on 2/4/99 by Shri A.G. Ahuja Advocate

Rlo. A.B.

VERSUS

RESPONDENT ... The State of M.P. through P.S. Sanna Chowki Ashta, District Jaspur

(31)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA No. 1178 / सन् 99 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: Hon'ble Shri Justice L.C.Bhadoo, Ag.C.J.,
Hon'ble Shri Justice Sunil Kumar Sinha, J

11.01.2006

Miss. Sofia Khan, counsel for the appellant.

Shri Ashish Shukla, Addl. Public Prosecutor, for the State.

Heard.

Oral judgment dictated on Dais.

As per L.C. Bhadoo, Ag. Chief Justice:

(1) This appeal is directed against the judgment of conviction and order of sentence dated 12.2.1999 passed by Addl. Sessions Judge, Jashpurnagar, in Sessions Trial No.171/1998 whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of the offence punishable u/s 302 IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for two years.

(2) The case of the prosecution, in brief, is that P.W.1 Dhan Ram lodged a report (Ex.P-1) in Police Station Sanna to the effect that on 14.7.1998 at about 7 – 8 a.m., he went to plough the field whereas Gayatri Bai and Sukhi Bai were at his residence. Sukhi Bai was returning to her house after throwing cow dung in kaa pit.

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मामला क्रमांक ....Cr.A..478/..99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

When she was passing through a street in front of the house of accused Budhram, he was cutting the wood with an Axe. On seeing Sukhi Bai he came and assaulted her with the back of the Axe on her right temporal region, as a result of which, she fell down and thereafter the accused dragged her upto the courtyard of the house of Sukhi Bai and he ran away. The said incident was witnessed by Gayatri Bai (P.W.2). Dhan Ram was informed by Bhagwati @ Faguni Bai (P.W.3) in the fields that why his sister Gayatri (P.W.2) was crying and on hearing this; he came to his house and reported the matter to the Police Station Sanna. Dhan Ram gave *merg* intimation based on F.I.R. was registered After registering the crime for commission of the offence u/s 302 IPC, the investigating officer left for scene of occurrence. After giving notice to the *Panchas*, prepared inquest under *Ex.P 3* on the body of Sukhi Bai. One *Kathri* stained with blood was seized under *Ex.P-2*. Blood stained soil and plain soil were also seized from the place of occurrence vide Ex.P-4. The accused was taken into custody and his memorandum was recorded vide Ex.P-5, on the basis of which, the weapon of offence i.e., Axe was seized from his house under Ex.P-6. The investigating officer, during the investigation, prepared

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मामला क्रमांक Cr.A. 1178/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

site plan at the place of occurrence. The seized articles were sent to Forensic Science Laboratory, Raipur from where the report dated 26.9.1998 was received. The dead body of Sukhi Bai was sent for post mortem examination to Primary Health Centre, Manora where Dr.R.S. Paikra conducted the autopsy and prepared report under Ex. P-12. After completion of investigation, charge sheet was filed in the Court of J.M.F.C., Jashpurnagar, who in turn, committed the case to Sessions Judge, Raigarh from where the learned Addl. Sessions Judge, Jashpurnagar, received the case on transfer.

(3) The prosecution in order to establish the charge against the accused examined 5 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and pleaded that he is innocent and he has been falsely implicated in the crime. In defence, he examined only one witness namely Dayanand Sai.

(4) The learned Addl. Sessions Judge, after hearing counsel for the respective parties and on perusal of the record, convicted and sentenced the accused as aforementioned.

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मामला क्रमांक ...CV..A..1178../99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(5) We have heard Miss. Sofia Khan, Advocate, on behalf of the appellant and Shri Ashish Shukla, Addl. Public Prosecutor, on behalf of the State.

(6) Miss. Sofia Khan has not disputed the homicidal death of Sukhi Bai. P.W.8 Dr.R.S. Paikra who conducted the autopsy on the body of Sukhi Bai, has stated that on 16.7.1998 when he was working as an Assistant Surgeon of Primary Health Center, Manora, conducted autopsy on the body of the deceased and there was one lacerated wound above the right ear in size of 1½" x 1". There was a blood clout near the wound. On opening the body, it was found that there was a depressed fracture beneath the injury. The cause of death was due to Coma, as a result of fracture of skull bone, which was homicidal in nature. His report is Ex.P-11. Therefore, in view of the above medical evidence as also ocular evidence of P.W.2 Gayatri Bai, it is established that the death of Sukhi Bai was homicidal in nature.

(7) As far as the involvement of the accused in crime in question is concerned, P.W.2 Gayatri Bai, an adopted daughter of Sukhi Bai, has stated that in the fateful morning at about 8 a.m., she was at residence; the accused was cutting the wood with an Axe at

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मामला क्रमांक ...Cr.A..1178/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his house. At that time, Sukhi Bai was returning after throwing the cow dung and when she was passing through the street in front of the house of the accused, all of a sudden, the accused attacked Sukhi Bai with an Axe near the right temporal region of deceased. On hearing screams, this witness came out and started raising cries, on which the accused ran away. As a result of the assault, Sukhi Bai fell down on the ground. On hearing her cries, Bhagwati @ Fagni Bai (P.W. 3) went to the agricultural field and informed her brother Dhan Ram, who rushed to the place of occurrence and thereafter, Gayatri narrated the story to him, on which, he lodged the report. In the cross examination of this witness, the defence has not been able to elicit any circumstance to discredit the evidence of this eye-witness. Moreover, the accused is nephew of Sukhi Bai, therefore, there was no reason to implicate him in a false case. The above evidence of Gayatri Bai stands corroborated by the medical evidence of Dr.R.S. Paikra (P.W.8) who stated that there was one lacerated wound on the right temporal region of the deceased. Even the weapon of offence was recovered at the instance of the accused, therefore, the entire medical and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstantial evidence establishes the involvement of the accused in the crime in question.

(8) Learned counsel for the appellant argued that as per the prosecution case, the deceased Sukhi Bai used to abuse the accused and say that why he is ploughing the whole field and not allowing them to utilize the field and on the same day at the time of incident, Sukhi Bai abused the accused which infuriated him, as a result of which, the appellant assaulted the deceased with the back side of the Axe and ran away, therefore, from the above evidence, it can be inferred that the accused did not assault his aunt (elder mother) with an intention to cause her death and in such a situation, the offence against the accused does not travel beyond section 304 of IPC.

(9) On the other hand, Shri Ashish Shukla, supported the judgment of the trial Court.

(10) P.W.1 Dhan Ram, son of the deceased and P.W.2 Gayatri, the daughter of the deceased, have stated that they do not know why the accused assaulted their mother, therefore, no motive regarding the assault made by the accused has been proved by the prosecution. On the contrary, in the memorandum of the accused,

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मामला क्रमांक ..Cr.A.1178/99.. सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

it has come on record that when Sukhi Bai was returning after throwing the cattle dung, she saw the accused and started abusing him which infuriated him and he assaulted the deceased with the back side of the Axe and ran away. It has further come in the evidence of Gayatri Bai, that at the time of incident, the accused was cutting the wood at his residence. This shows that the accused was not prepared to assault the deceased and he was busy in his work. Moreover, as has been mentioned earlier, P.W.1 and P.W.2 have not stated as to why the accused assaulted the deceased who was his aunt without any rhyme or reason, therefore, the point ~~was~~ mentioned in the memorandum of the accused that Sukhi Bai started abusing him which infuriated him and in a spur of moment, he assaulted the deceased. In such a situation, the seizure of weapon of offence i.e., Axe in the house of accused appears to be plausible and from the above evidence, the inference can be drawn that the accused assaulted the deceased, all of a sudden, without any premeditation in a heat of passion, when Sukhi Bai abused the accused. Therefore, the case of the accused is squarely covered under Explanation 4 of Section 300 and it cannot be inferred from the evidence that the accused

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulted the deceased with an intention to cause the death of his near and dear aunt Sukhi Bai. Therefore, the offence does not travel beyond section 304 (Part II).

(11) In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused appellant u/s 302 IPC are set aside. Instead thereof, the accused is convicted u/s 304 (part ii) and sentenced to undergo R.I. for 9 years. It is stated that the accused is in detention since 16.7.1998. Therefore he is entitled for set off the above period of detention against the conviction imposed upon him.

Sd/-
Acting Chief Justice

Sd/-
SUNIL KUMAR SINHA
Judge

Rao

P.T.O.